

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF OKLAHOMA**

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Mitchell Shed,

Plaintiff,

v.

Natural Herbal CBD; and DOES 1-10,  
inclusive,

Defendants.

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Civil Action No.: 20-cv-365-RAW

**COMPLAINT AND  
DEMAND FOR JURY TRIAL**

For this Complaint, the Plaintiff, Mitchell Shed, by undersigned counsel, states as follows:

**JURISDICTION**

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

**PARTIES**

3. The Plaintiff, Mitchell Shed ("Plaintiff"), is an adult individual residing in Haskell, Oklahoma, and is a "person" as defined by 47 U.S.C. § 153(39).
4. Defendant Natural Herbal CBD ("Natural Herbal"), is a Utah business entity in Pleasant Grove, Utah, and is a "person" as defined by 47 U.S.C. § 153(39).
5. Does 1-10 (the "Agents") are individual collectors employed by Natural Herbal and whose identities are currently unknown to the Plaintiff. One or more of the Agents may be joined as parties once their identities are disclosed through discovery.

6. Natural Herbal at all times acted by and through one or more of the Agents.

### **FACTS**

7. Within the last year, Natural Herbal sent Plaintiff text messages to cellular telephone number 918-xxx-7779.

8. At all times mentioned herein, Natural Herbal contacted Plaintiff on his cellular telephone using an automated telephone dialing system (“ATDS”) and/or by using artificial messages.

9. Plaintiff does not have an account with Natural Herbal.

10. Plaintiff never provided his cellular telephone number to Natural Herbal and never provided his consent to Natural Herbal to be contacted on his cellular telephone.

11. Plaintiff replied to Natural Herbal’s texts with “STOP”.

12. Despite Plaintiff’s repeated and unequivocal instructions that Natural Herbal stop all text messages, Natural Herbal continued to place text messages to Plaintiff’s cellular telephone.

### **COUNT I**

#### **VIOLATIONS OF THE TCPA – 47 U.S.C. § 227, et seq.**

13. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

14. Without prior express consent, Defendants contacted Plaintiff on her cellular telephone using an automatic telephone dialing system (“ATDS”) and/or by using artificial messages in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

15. Plaintiff never provided express consent to Defendants to send text messages to his cellular telephone number.

16. Moreover, Plaintiff directed Defendants to cease all text messages to his cellular telephone.

17. The messages from Defendants to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

18. Defendants sent text messages to Plaintiff’s cellular telephone knowing that it lacked consent to send text messages to his cellular telephone number. As such, each text message placed to Plaintiff was made in knowing and/or willful violation of the TCPA and is subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

19. As a result of each text message made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each text message in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

20. As a result of each text message made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants as follows:

- A. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
- B. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and

1. Such other and further relief as may be just and proper..

Dated: October 15, 2020

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Respectfully submitted,

By /s/ Sergei Lemberg

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